IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16631 of 2007
WITH
CIVIL APPLICATION NO.9248 OF 2007
IN SPECIAL CIVIL APPLICATION No. 16631 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAGDISHBHAI THAKORE & 1 - Petitioners
Versus
CHANDRIKABEN CHUDASMA & 3 - Respondents

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Appearance :
MR N.D.NANAVATI, SENIOR COUNSEL WITH MR HARIN P RAVAL FOR THE PETITIONERS.
MR S.N.SHELAT, SENIOR COUNSEL WITH Mr.P.S.CHAMPANERI FOR RESPONDENT NOS.1 - 2.
NONE FOR RESPONDENT NO.3.

MR SUNIT SHAH, LEARNED GOVERNMENT PLEADER WITH MR MAULIK NANAVATI, AGP for Respondent No.4.
MR KAMAL TRIVEDI, LEARNED ADVOCATE GENERAL WITH MS SANGEETA VISHEN, AGP FOR RESPONDENT NO.5.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 25/07/2007

ORAL JUDGMENT

The present petition has been preferred for a writ of mandamus or any other appropriate writ, order or direction against the Speaker of State Legislative Assembly of State of Gujarat for the reason that the Speaker of the House has not allowed the presentation of the report given by Public Accounts Committee on the table of the House of Legislature.

2. An important question has been raised for the adjudication of this Court to the effect that :

> *Whether the Speaker of the House of Legislature can be directed by this Court to allow presentation of report of the Public Accounts Committee on the table of the House, in pursuance of Gujarat Legislative Assembly Rules, enacted by the State under Article 208 of the Constitution of India, to be read with directions issued by the Speaker under Gujarat Legislative Assembly Rules, especially under Rule No.56 read with Rule No.183?*

3. <u>Facts of the Case</u>:

Public Accounts Committee passed a resolution on 24th March,2006 to the effect that a draft of the report has been prepared and the same is sent to the Speaker of the House for his approval. Similar is a resolution dated 28th March,2006 to the effect that the draft report is ready and is yet to be finalized. On 19th June,2006, the

Speaker of the House returned the draft report given by Public Accounts Committee and pointed out that the same is not in consonance with the Gujarat Legislative Assembly Rules enacted under Article 208 of the Constitution of India. It was suggested that Public Accounts Committee cannot consider the accounts upon which no report is given by Comptroller and Auditor General. The report of Public Accounts Committee cannot travel beyond Rule No.197 of Gujarat Legislative Assembly Rules, enacted under Article 208 of the Constitution of India. Nothing happened thereafter for considerably longer period after 19th June,2006. On 14th March,2007, issue was raised in the proceedings of the Legislature of the State. Point of order was raised by the members of Legislative Assembly and ruling thereupon has been given by the Speaker to the effect that the report given by the Public Accounts Committee is dehors the report of the Comptroller and Auditor General of India. Ruling has been given by the Speaker of the House. Minutes of the proceedings dated 14th March,2007 have been presented before this Court along with an affidavit-in reply filed by Mr.D.M. Patel, Secretary, Gujarat State Legislative Assembly, Gandhinagar. After a period of approximately 4 months i.e. on 10th July,2007, this petition has been filed before this Court seeking a writ of mandamus or

any other appropriate writ, order or direction upon Speaker. On 16th July,2007, the same unsigned draft report of the Public Accounts Committee was sent by the new Chairman (respondent No.2) to the Speaker of the House. The said draft unsigned and undated report was returned by the Speaker of the House to the Chairman of the Public Accounts Committee by pointing out that the suggestions made by the Speaker dated 19th June,2006 have not been carried out by the Public Accounts Committee. Thus, what was sent before one year, the same was the position even in the month of July,2007, so far as the nature of the report of the Public Accounts Committee is concerned. The notice was already issued on 6th July,2007 by this Court in this writ petition. Thus, sending of draft report on 16th July,2007 was during the course of hearing of this petition. On 18th July,2007 again report was sent. It is submitted by Learned Advocate General of the State that on this report also, the Speaker has made the same endorsement and it has been returned to Public Accounts Committee for complying with the provisions of Rule 197 of Gujarat Legislative Assembly Rules enacted for the proceedings in the House under Article 208 of the Constitution of India. The controversy appears regarding placing the report before the House, given by Public Accounts Committee which covers certain points, on which,

no report of the Comptroller and Auditor General of India has been given, especially on “Sujlam-Suflam Yojna”. “Sujlam-Suflam Yojna” is pertaining to broadly for :

(a) Khet talavadi;

(b) Check dam;

(c) to supply water of river Narmada to dams of North Gujarat;

(d) to construct canals from Kadana dam.

3.1 The report was given by the Comptroller and Auditor General of India for the years 1993-94, 1994-95 but there was no report of the Comptroller and Auditor General for the year 2005-06 and, therefore, Public Accounts Committee cannot give any report of accounts for the year, for which no report was given by Comptroller and Auditor General of India. This controversy has given birth to the present petition. The issue involved in this petition is basically pertaining to powers, privileges and immunities of the House of the Legislature of the State under Article 194 of the Constitution of India to be read with Articles 208 and 212 of the Constitution of India. These articles are referred hereinafter at length along with judicial interpretations. This Court has issued notice only to the respondent Nos.4 and 5. Respondent No.5 is a Secretary,

Gujarat State Legislative Assembly. In fact, voluntarily respondent Nos.1 and 2 appeared through a Learned Senior Advocate, after the hearing of the petition has been started. Though Notices were not issued to respondent Nos.1 and 2, this Court has heard the Learned Advocate appearing for respondent Nos.1 and 2 and his submissions on the constitutional provisions have been referred hereinafter.

4. Public Accounts Committee - Constitution, Function and its control :

As per Rule 196, Public Accounts Committee is constituted. It shall consist of not more than 15 members who will be elected by the Assembly. Minister cannot be a member. Functions of the Committee is given under Rule 197. So far as control upon the Committee is concern, it is govern by Rule 2(c), 183, 186 of Gujarat Legislative Assembly Rules to be read with direction No.23 issued by the Speaker in exercise of powers given by Rule 183 of Gujarat Legislative Assembly Rules enacted under Article 208 of the Constitution of India. Under the Constitution of India, separate are the powers, privileges and immunities of the legislature, Judiciary and Executives. One of such Articles is Article 194 of the Constitution of India, which is akin to the fundamental rights of the

State Legislatures. Every House of the legislature and the members of the Committees thereof have their own powers, privileges and immunities for the smooth functioning of the House of the Legislature. House has power to enact Rules for its own procedure. These Rules of procedure are Rules for governing its business in the House and by the House. Article 208 of the Constitution of India, empowers House of Legislature of the State to make Rules for regulating, its procedure and conduct of its business.

4.1 In pursuance of this Article 208 of Constitution of India, the State Legislative Assembly of the Gujarat has enacted Rules and they are known as "Gujarat Legislative Assembly Rules". They came into force from 1st of January,1966. These Rules prescribe detailed procedure and conduct of the business of the State legislature. Under Part-XV, there are general Rules pertaining to different types of Committees. As per these general Rules, especially under Rule 183 read with Rule 186, a Committee shall function under the general control and supervision of the Speaker and the Speaker may from the time to time issue such direction as he may consider necessary for efficient working of the Committee or for regulating its procedure and for organization of its

work.

4.2 In pursuance of this Rule 183 to be read with Rule 186 of the Gujarat Legislative Assembly Rules, the Speaker of the House has issued several directions and as per direction No.22, the report to be presented to the House must be approved by the Committee and must be signed by its Chairman or any other authorized members of the Committee and as per direction No.23 issued by the Speaker of the House for the efficient working of the Committee or for regulating its procedure or for organization of its work to the effect that before the report is presented to the House, it shall be submitted to the Speaker for its information and for such orders as he may deem fit to give thereon.

4.3 It appears from this direction No.23 read with Rules 183 and 186 of the Gujarat Legislative Assembly Rules, a direction was given on 19th June,2006 by the Speaker of the House to the Public Accounts Committee that its report is dehors the provisions of Gujarat Legislative Assembly Rules, especially in breach of Rule No.197(1) of Gujarat Legislative Assembly Rules and, therefore, draft report of Public Accounts Committee was sent back. Rule 197(1) of Gujarat Legislative Assembly

Rules, reads as under:

> *"**197(1)** The committee shall consider the Appropriation Accounts and the Finance Accounts of the State and the report of the Comptroller and Auditor General of India thereon. The Committee may also consider-*
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> *(i) such other Accounts laid before the House as the committee may think fit;*
>
> *(ii) such matter as is specially referred to it by the House or the Speaker."*
>
> *(Emphasis supplied)*

4.4 A contention has been raised by the learned counsel for the petitioner as well as learned counsel for respondent Nos.1 and 2 that the Speaker cannot sit in appeal against the report given by the Public Accounts Committee and a Chairman of the Committee can present the report before the House, as per Rule 177 of the Gujarat Legislative Assembly Rules as well as under direction No.22 issued by the Speaker of the House as well as under Rules of procedure (internal working) of the Public Accounts Committee, especially Rule No.24 thereof. In other words, it was their contention that Public Accounts Committee is not working under Speaker. This attractive contention raised by the learned counsel for the petitioners and by learned counsel for respondent Nos.1 and 2, is not accepted by this Court, mainly for the

reason that looking to the definition of word “Committee” given under Rule 2(c) of the Gujarat Legislative Assembly Rules, the Speaker has direct control upon the Committee. Rule 2(c) of the Gujarat Legislative Assembly Rules, reads as under:

> ***“2(c) “Committee”*** *means a committee of the members of the House appointed or elected by the House or nominated by the Speaker and which works under the directions of the Speaker.”*
>
> *(Emphasis supplied)*

4.5 Rule 56 of Gujarat Legislative Assembly Rules defines General Powers of the Speaker, it reads as under:

> ***“Rule 56. General Powers of Speaker****. - All matters not specifically provided for in these rules and all questions relating to the detailed working of these rules shall be regulated in such manner as the Speaker may, from time to time direct.*
>
> *(Emphasis supplied)*

Thus, even if the members of the Committee have been appointed by the House or elected by the House or nominated by the Speaker, there is a control of the Speaker upon the Committee and the Committee is working under the direction of the Speaker. Looking to the provisions of Part-XV, which are general provisions for all the Committees, Rules 183 and 186 thereof, read as under:

> ***"183. Power of Speaker to give directions. -***
> *(1) A committee shall function under the general control and supervision of the Speaker and subject to these rules the Speaker may, from time to time issue such directions as he may be consider necessary, for the efficient working of the committee or for regulating its procedure and organization of its work.*
>
> *(2) If any doubt arises on any point of procedure or otherwise, the Chairman may refer the point to the Speaker whose decision shall be final.*
>
> ***186. Applicability of general rules to all committees.-***
> *Subject to the special provisions made in these rules in respect of any committee the general rules in this part shall apply to all committees."*
> *(Emphasis supplied)*

Thus, as per Rule 183 to be read with Rule 186, the Speaker of the House can issue directions to the Committee -

(i) for its efficient working;

(ii) for regulating its procedure; and

(iii)for organization of its work.

This is also a rule of procedure fixed by the House for its own smooth working under Article 208 of the Constitution of India read with Article 212 of the Constitution of India. The aforesaid Rule 183 has been enacted to carry out functions in the House. What should

be the procedure to conduct the business of the House, is left to the House itself. There may be some deviation or departure in following procedure in the House. Generally, there is no scope for judicial review for irregularities alleged in the proceedings in the House. The contention has also been raised by the learned counsel for the petitioners as well as learned counsel for respondent Nos.1 and 2 that the decision has been taken by Speaker not in the House but in the chamber of the Speaker and, therefore, no immunities can be claimed as per Article 212 of the Constitution of India. This contention is also not accepted by this Court. Looking to the definition given as per Section 2(n) of precincts of the House, which reads as under:

> ***2(n) "Precincts of the House"*** *means and includes the Chamber, the Lobbies, the Galleries and such other places as the Speaker may from time to time specify."*
> *(Emphasis supplied)*

Thus, as per the aforesaid definition, the "precincts of the House" includes the chamber, the lobbies, the galleries and such other places as the Speaker may from time to time specify. Thus, the decision is taken by the Speaker in the chamber and, therefore, is not immuned under Article 212 of the Constitution of India. This attractive argument is devoid of any merits.

The decision has been taken by the Speaker as stated hereinabove upon a draft report given by Public Accounts Committee, which is unsigned and undated in pursuance of the powers vested in the Speaker for regulating the procedure of the Committee under Rule 183 to be read with Rule 186 to be read with direction No.23 issued by the Speaker. Direction No.23 issued by the Speaker in pursuance of Rules 183 read with 186 of Gujarat Legislative Assembly Rules, reads as under:

> *"23. Before a report is presented to the House it shall be submitted to the Speaker for his information and for such orders as he may deem fit to give thereon."*
> *(Emphasis supplied)*

4.6 The Speaker of the House is regulating the business of the House. Speaker holds an important and ceremonial office. Speaker/Chairman holds pivotal position in the scheme of Parliamentary democracy and is the guardian of rights and privileges of the House. Speaker's office is undoubtly very high and has considerable aura with the attribute of impartiality. Primary function of Speaker is to regulate the conduct of business and procedure of the Assembly. Looking to the powers given to the Speaker under the Gujarat Legislative Assembly Rules, I am clearly of the opinion that the Public Accounts Committee is working directly under the

supervision and control of the Speaker of the House and the Speaker of the House has all powers and privileges to issue directions from time to time for the efficient working of the Committee, for regulating its procedure and organization of its work. Rule 177 or direction No.22 or rule of procedure No.24 for the internal working of the Public Accounts Committee cannot be given over-riding effect upon general power of the Speaker given under Rule 183 to be read with Rule 56 and Rule 2(c). Right from the definition of word “Committee”, it is clear that “Committee” means a committee of members appointed or elected by the House or nominated by the Speaker **AND** which works under the direction of the Speaker. Thus, the argument, which is canvassed before this Court that the Chairman of the Public Accounts Committee can present the report before the House without getting any direction from the Speaker, is running counter to and in contradiction with the Rules enacted by the House for conducting its own business. What is contended before this Court is that the Speaker of the House cannot give a direction for pruning the report. This contention, for the reasons stated hereinabove is running counter to and in contradiction with the Gujarat Legislative Assembly Rules, especially Rule 183 to be read with Rule 186 to be read with limited sphere of work assigned to the Public

Accounts Committee under sub-rule (1) of Rule 197 to be read with direction no.23 issued by the Speaker. Pruning of report of any Committee is permissible by the direction of Speaker of the House, especially when Speaker is acting as per direction no.23, issued under Rule 183 of Gujarat Legislative Assembly Rules. Apart from the fine nicety of the aforesaid Rules, even prima facie, these Rules and directions are governing the proceedings in the Legislature as per Article 208 of the Constitution of India and, therefore, as per Article 212 of the Constitution of India, validity of any proceedings in the legislature of the State cannot be called in question on the ground of alleged irregularities.

5. Which report is to be tabled before legislature:

It is strenuously argued by learned counsel for the petitioners as well as learned counsel for respondent Nos.1 and 2 that whatever report is given by the Chairman of the Committee, ought to be tabled before the House. Looking to the provisions of the Rules i.e Gujarat Legislative Assembly Rules, a report must be signed by the Chairman or by any authorized member of the Committee, as per Rule 175(3) as stated hereinabove. As per Rule 2(c) of Gujarat Legislative Assembly Rules, Committee is always working under the supervision and

control of the Speaker. Such powers have been given under Rule 183 of the Gujarat Legislative Assembly Rules, to the Speaker of the House and even he has a power to issue direction. Direction No.22 issued by the Speaker, reads as under:

> *22. The report to be presented to the House shall be as approved by the Committee and signed by its Chairman or any other member of the Committee authorised by it to sign it on its behalf."*
>
> *(Emphasis supplied)*

Thus, a report to be presented to the House, must be approved by the Committee and must be signed by the Chairman of the Committee or must be signed by any authorized member of the Committee. As per direction No.23, before any report is presented before the House, the Speaker being a navigator of the proceedings in the House must be informed about this report. As per direction No.23, it has been accepted by the State Legislature as proceeding in the House that the report of the Committees shall be submitted to the Speaker for his information and for such orders as he may deem fit to give thereon. This is also a nature of proceedings adopted by the House itself, whether members of the Public Accounts Committee like or not. It is not the wish and will of the members of the Public Accounts Committee to be considered, but, the Court is concerned

with the procedure adopted by the House for conducting its business in the House. Every House as stated hereinabove, has it own powers, privileges and immunities. Article 194(3) of the Constitution of India is like a fundamental right of the State Legislature. To fortify these powers, privileges and immunities, further powers have been given to the House under Article 208 of the Constitution of India so that they can frame their own Rules to conduct business in the House (these are the rules known as Gujarat Legislative Assembly Rules). Constitution has given further immunities to strengthen the efficient work in the House, that even if there are irregularities in following the procedure for conducting business in the House, as per sub-article (1) of Article 212 of the Constitution of India, the validity of the proceedings in the House shall not be called in question on the ground of alleged irregularities of the procedure. In the facts of the present case, I see no irregularity in the proceedings. Looking to the facts of the present case, there is no deviation or departure in the proceedings, by the Speaker of the House. The Speaker of the House has meticulously followed the procedure adopted by the legislature, especially direction No.23 read with Rule 183 read with Rule 186 of the Gujarat Legislative Assembly Rules, but as stated hereinabove, as

per Article 212(1), even if there is an irregularity, in my opinion, there is no scope for judicial review for testing the proceedings in the House. For the proceedings in the four walls of the House, the best Judge is the House itself, except where the Speaker of the House is acting as a Tribunal. At length, learned counsel for the petitioners as well as learned counsel for respondent Nos.1 and 2 and Advocate General with Government Pleader of the State have taken this Court, to the fine niceties of powers to be exercised in the judicial review for the proceedings taken in the House. As a general rule, even if there is an irregularity, in any proceedings in the legislature, no writ is tenable under Article 226 of the Constitution of India. Every rule has its own exceptions. The aforesaid general rule, is no exception, to this. But exceptions are exceptions and general rule is to be followed in normal situations. Exceptions i.e. cases in which judicial review of decision of Speaker is permissible, have been discussed hereinafter. In the facts of the present case, Learned Advocate General of the State has presented original file and the resolutions of the Public Accounts Committee, which reveal the fact that on 24th March and 28th March,2007, the report of the Public Accounts Committee was in draft format and was not finally approved by the Committee. Looking to the

original file, in which, the Speaker has made endorsement and given direction on 19th June,2006, the report was returned by the Speaker to Public Accounts Committee. It appears that again the same report was submitted by Public Accounts Committee to the Speaker in a draft format, it was unsigned and it was undated. It was received by Speaker on 16th July,2007. It was returned by the Speaker on the same day. In the year 2006, Chairman of Public Accounts Committee was changed. Now, instead of respondent No.1, new Chairman is respondent No.2. Thereafter again new Chairman sent the same report on 18th July,2007, but, now with a signature of Ex-chairman i.e. respondent No.1. It is alleged by Advocate General that though respondent no.1 was not a Chairman of Public Accounts Committee on 18th July,2007, with his signature report was sent to the Speaker but it was also undated. This was received by the Speaker on 18th July,2007, which has been again returned by the Speaker as per Direction No.23 issued under Rule 183 of Gujarat Legislative Assembly Rules enacted under Article 208 of the Constitution of India. Thus, unsigned and undated report in its draft format, which is not finalized by the Committee or approved by the Committee and in defiance of the direction given by the Speaker dated 19th June,2006 cannot be tabled on the floor of the House. A lots of hue

and cry has been raised about the report of the Public Accounts Committee but if the facts are seen closely, as stated hereinabove, there is no finalized or approved report of Public Accounts Committee in existence. Never ever before Public Accounts Committee sent report to the Speaker, which is approved by the Committee and signed by the Chairman of the Public Accounts Committee. Despite the direction was given on 19th June,2006 by the Speaker, as per direction No.23 issued by the Speaker under Rule 183 of the Gujarat Legislative Assembly Rules, has not been complied with. Such report, looking to the procedure adopted by the House of the legislature of the State has rightly been returned and correctly been not allowed to be tabled on the floor of the House, by the Speaker – a navigator of the proceedings of the House. Looking to the procedure adopted by the House for regulating its own business, the report given by Public Accounts Committee in its draft format, unsigned and undated cannot be allowed to be tabled before the House.

6. Point of Order raised and Ruling given by the Speaker :

Looking to the facts of the case, it appears that Public Accounts Committee has given a draft report. Speaker has given direction to prune the report so as to

bring it within the sphere of the work assigned to Public Accounts Committee, as per Rule 197(1). The speaker has returned the file on 19th June,2006. Point of order was raised in the House about proceedings by the members of the Legislative Assembly on 14th March,2007. Minutes of the proceedings dated 14th March,2007 of the House have been presented by respondent No.5 along with affidavit-in reply. Looking to these proceedings in the House on 14th March,2007, there was a detailed discussion in the House proceedings about the report of the Public Accounts Committee, about scope, compass and sphere of work of Public Accounts Committee and ultimately a ruling was also given by the Speaker of the House, during the proceedings in the House that he has already returned the file to Public Accounts Committee on 19th June,2006 giving a direction that Public Accounts Committee cannot consider the appropriation accounts and finance accounts of the State, for which, no report of Comptroller and Auditor General of India has been given. Looking to the facts of the case, it is clear that the decision was not given by the Speaker over-night and without any deliberation and without following any thinking process but it appears that enough care has been taken by the Speaker of the House before giving direction to prune the report. The opinion of expert of parliamentary procedure

has been taken on record. This Court is not going much into the details of the report of the expert, but, suffice it to say that the Speaker of the House being a Supervisor and Comptroller of the efficient working of Public Accounts Committee under Rule 2(c) to be read with Rule 183 has taken enough care and has applied his mind, fully, towards the working sphere of Public Accounts Committee and for correct interpretation of Rule 197(1). As stated hereinabove, there may be an error in following the procedure. There may be some departure in following the procedure. There may be some irregularities in following the procedure but looking to the fundamental rights of the State Legislature enshrined under Sub-Article (3) of Article 194 read with Article 208 of Constitution of India, such irregularities cannot be called in question, much less, in the Court under sub-article (1) of Article 212. It appears from the facts of the case that the Speaker is in quest for correct interpretation of Rule 197(1). **Speaker-A** may not have taken a decision, which a **Speaker-B** has taken in the facts of the case, but, this type of challenge to the decision of the Speaker, while regulating the proceedings in the House and especially as a Supervisor and the Controller of the Committees under the general Rule No.183, the Court will not issue any writ much less a

writ of mandamus or any other appropriate writ, order or direction upon the Speaker of the House. Point of order was raised. Ruling was given by the Speaker. Minutes of proceedings in the House dated 14th March,2007 is on record. It speaks about full application of mind by the Speaker and his zeal to follow, scrupulously, the Rules of Procedure adopted by the House, for conduct of its business.

7. Article 212 of the Constitution of India, which permits not the Court to inquire into the proceedings of the legislature of a State :

Each House in Britain possess three rights. The House is a Judge of its own proceedings; the House has right to punish; The House has right to settle its own procedure for conducting its business. This concept has also been adopted in our Constitution of India. Article 194 of Constitution of India, defines powers, privileges and immunities of the State Legislature and their members and Committees. By now, several are the judicial pronouncements for interpretation of Article 194 of the Constitution of India. Article 194(1) is subject to the provisions of the Constitution of India, which includes, Article 19(1)(a) **whereas** powers, privileges and immunities given under Article 194(2), 194(3) and 194(4)

are not subject to the provisions of the Constitution of India. This is a remarkable difference in the powers, privileges and immunities given under Article 194(1) of Constitution of India and on other hand, Articles 194(2), 194(3) and 194(4). Article 194(3) of Constitution of India is like fundamental rights given to the State Legislature. Visionary drafters of the Constitution of India, have not made this provision i.e. Article 194(3) - subject to the provisions of the Constitution of India whereas the powers, privileges and immunities under Article 194(1) of Constitution of India are subject to Constitution of India. To enjoy these powers, privileges and immunities by the State Legislature, the House has further empowered State Legislatures to make their own Rules for the proceedings to be carried out in the House to conduct their business. Article 212 of the Constitution of India gives privilege to the House to the effect that the validity of the proceedings in the House will not be questioned on the ground of alleged irregularities of procedure, in the House. Even if the Speaker has committed irregularity, in following procedure, this Court cannot take the decision of the Speaker in the judicial review. It has been held by the Hon'ble Supreme Court in the case of **M.S.M. Sharma v/s. Dr.Shree Krishna Sinha and others, reported in AIR 1960**

SC 1186, especially in para-10 thereof, as under:

> *"10. There are two answers to this question, firstly that accordingly to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business. Possibly, a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings, and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business that cannot be a ground for interference by this Court under Art. 32 of the Constitution. Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere non-compliance with rules of procedure cannot be a ground for issuing a writ under Art. 32 of the Constitution vide Janardhan Reddy v. State of Hyderabad 1951 SCR 344 : AIR 1951 SC 217".*
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> *(Emphasis supplied)*

7.1 It has been held by the Hon'ble High Court of Madras in the case of **A.M.Paulraj v/s. The Speaker, Tamil Nadu Legislative Assembly, Madras and another, reported in AIR 1986 MADRAS 248**, especially in para-25 thereof, relevant part of para-25 reads as under:

> *"25. ..... Apart from the fact that there does not appear to be any departure from the procedure prescribed by the rules under Art.208(1) of the Constitution in view of the decision of the Supreme Court in Sharma's case, AIR 1960 SC 1186 cited supra, even though the Legislature may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for issuing a writ under Art.226 of the Constitution. The question of punishment for a breach of privileges is a matter exclusively within the jurisdiction of the Legislature and Art.212 of the Constitution forecloses any scrutiny by the Court with regard to the procedure adopted by the Legislature. ....."*
>
> *(Emphasis supplied)*

Thus, in view of the aforesaid decision, Article 212 of the Constitution of India, forecloses any scrutiny by the Court with regard to any proceedings in the House on the ground of any alleged irregularity of procedure. It has been decided by Hon'ble High Court of Allahabad reported in **AIR 1954 All.319**, especially in para-10 and 11 thereof, to the effect that it took centuries for the

simple principle to be firmly established in Britain. In Britain, as stated hereinabove, the House is possessing three basic rights. It is open for the House to depart from the procedure adopted by it at their own discretion. The House is immuned from the scrutiny by the Court as to the manner in which the Rules of business interpreted by them whatever is said or done within the walls of assembly cannot be called in question. The position of privileges in Britain is also the position of privilege in India, as stated hereinabove, especially looking to the fundamental rights given to the State Legislatures under sub-Article 3 of Article 194 of the Constitution of India. Of course, this is subject to few exceptions but as a general Rule, any decision taken by the Speaker in exercise of the powers vested in him for “regulating business of the House”, is covered by Article 212 of the Constitution of India. Even if it is a wrong decision of the Speaker for conducting business in the House, no judicial review is permissible.

8. Rules of procedure adopted by the House of legislature of the State, whether they are statutory in nature:

The Constitution of India has given power to the State Legislature to adopt their own rules for procedure

to conduct its business. State of Gujarat has also enacted Rules under Article 208 of the Constitution of India, known as “Gujarat Legislative Assembly Rules”. These Rules have been enacted, in pursuance of Article 208 of the Constitution of India so that the House of the legislature of the State can enjoy its fundamental rights guaranteed under Article 194(3) of the Constitution of India. Irregularities in following the procedure have also been immuned under Article 212(1) of the Constitution of India. Thus, the rules of procedure adopted by the Legislative Assembly are the rules to govern their own business. Legislature is one of the three wings of Democracy. For efficient working in the House, as stated hereinabove, centuries time has been taken for crystallization of immunities in Britain. These immunities have been accepted by our Constitution. Proceedings in the House will be governed by the Rules of Procedure adopted by the House, under Article 208 of the Constitution of India. Deviation is also made permissible and cannot be called in question under Article 212(1) of the Constitution of India because the rules of procedure are the Rules to enjoy powers, privileges and immunities, which is very much necessary for effective and efficient working and for maintaining the Majesty of the House and, therefore, the Rules of procedure adopted by the

legislature of the State under Article 208 of Constitution of India are not statutory in nature. No proceedings can be initiated in the Court of law for the breach, for the deviation or for the departure from the rules of procedure adopted by the House. It has no mathematical co-relation that when statute empowers to enact the rules, these rules are automatically, statutory in nature. It has been held by Division Bench of this Court in the case of **Chhabildas Mehta, M.L.A V/s. The Legislative Assembly, Gujarat State and others reported in 1970 GLR 729**, especially para 14, 15 and 16 thereof, as under :

> ***"14.*** *The first question which arises for consideration is as to the true nature of the Rules made under Article 208(1). Are those Rules intended to have statutory force or effect so as to give rise to an enforceable right or obligation in a Court of law or are they meant to have effect only for regulating the procedure of the House and its conduct of business without creating any legal rights or obligations? The question is one of interpretation and like all other questions relating to interpretation, it has to be decided on a comprehensive view of the relevant provisions of the Constitution. To do so it is necessary to go back again to Article 194(3) and to refer to one other privilege of the House of Commons. It is clear from May's Parliamentary Practice, (Seventeenth Edition) page 60, that the House of Commons has the privilege to regulate its own code of procedure. May says that this is such a obvious right-it has never been directly disputed-that it is unnecessary to enlarge upon it except to say that the House is not responsible to any external authority for following the rules it lays down for*

itself, but may depart from them at its own discretion. This being a privilege enjoyed by the House of Commons at the commencement of the Constitution would be incorporated in Article 194(3) unless it is excluded by an inconsistent provision of the Constitution. The only provision which could be pointed out by the petitioners as inconsistent with this privilege was Article 208(1). That Article provides that the House of Legislature may make rules for regulating, subject to the provisions of the Constitution, its procedure and the conduct of its business. The argument of the petitioners was that the Rules authorized under Article 208(1) were rules having statutory force or effect and were binding on the House and the House could not depart from them without committing a breach of a statutory obligation enforceable at law subject only to the exception contained in Article 212(1) and the privilege that the House may depart from its rules for conduct of business at its own discretion without being answerable to any external authority was, therefore, excluded by Article 208(1). But this argument suffers from the same fallacy as the argument of Mr.Daru and the learned Government Pleader in respect of the earlier contention. It assumes the validity of the premises which has to be established. We have to determine whether the rules under Article 208(1) have statutory force or effect in the light of the other provisions including Article 194(3). We cannot assume that they have statutory force or effect and conclude that, therefore, they exclude the privilege under Article 194(3). Moreover, the rule-making power conferred under Article 208(1) is by its very words subject to other provisions of the Constitution which include Article 194(3) and, therefore, the privilege claimed under Article 194(3) cannot be excluded on the ground that it is inconsistent with Article 208(1). In any event we have to interpret Article 208(1) in the light of the privilege claimed under Article 194(3) and see whether on any reasonable interpretation of Article 208(1) the privilege in Article 194(3) can stand side by side with Article 208(1) without any inconsistency or incongruity. To this aspect of the matter we shall revert a

little later.

***15**. Now it is not an inviolable canon of construction that rules or regulations made in exercise of statutory power must always be construed as enacting a statutory obligation. Take for example the recent decision of the Supreme Court in Executive Committee, U.P. Warehousing Corporation v. Chandra Kiran Tyagi, 1969(2) SCC 838. The question which arose for decision in that case was whether an order of dismissal passed by the U.P. Warehousing Corporation was null and void on the ground that it was passed in violation of regulations made by it in exercise of the statutory power under sec.54 of the Agricultural Produce (Development and Warehousing Corporation) Act, 1956. If the Regulations had the force of law, the order of dismissal passed in violation of regulations would be null and void but not so, if they did not have statutory force. It, therefore, became necessary for the Supreme Court to inquire what was the true nature of the regulations made by U.P. Warehousing Corporation. The Supreme Court held that the regulations though made in exercise of statutory power under sec.54 of the Act did not create statutory obligation of a mandatory chapter and their infraction did not render the order of dismissal null and void. Vaidialingam, J., speaking on behalf of the Court observed:-*

"As pointed out by us, the regulations are made under the powers reserved to the Corporation under sec.54 of the Act. No doubt they lay down the terms and conditions of relationship between the Corporation and its employees. An order made in breach of the regulations would be contrary to such terms and conditions, but would not be in breach of any statutory obligation, as was the position which this Court had to deal with in the Life Insurance Corporation case (supra)."

This decision is merely an illustration to show that the rules or regulations made in exercise of statutory power do not necessarily have statutory force or effect : they do not in all cases give rise to statutory rights or obligations enforceable in a Court of law. Of course, where rules or regulations are in the

nature of subordinate legislation intended to lay down binding rules or conduct for third parties, they would be held to be invested with legislative force and for all purposes of construction or obligation, they would be treated exactly as if they were in the statute and they would have the same effect as if contained in the statute. But where it appears clearly that the intention of the Legislature in conferring rule-making power on an authority was not to enable the authority to make binding rules of conduct, rules made by such authority would not have the effect of creating statutory rights and obligations enforceable at law. The word "rules", it is true, has the effect of an opiate on the mind : it conjures up the image of something enforceable at law. But we must remember that merely because the nomenclature used by the Legislature is "rules", it does not necessarily mean that they have statutory force or effect. Whether they have statutory force and effect or not would be a matter of construction and that again would depend on a number of relevant factors such as the scheme of the Act, the nature of the rule-making power, the authority on which power is conferred, the purpose for which the power is given and the subject matter of the rules and regulations. It is on a consideration of these and other like factors that we will have to determine whether the Legislative Assembly Rules made under Article 208(1) have statutory force or effect so as to create legally binding obligations enforceable at law.

*"**16**. Now in the present case even apart from Article 208(1) the House would have the power to make rules regulating its procedure and conduct of its business by virtue of the privilege incorporated in Article 194(3). The rule-making power contained in Article 208(1) is, therefore, not a new power conferred on the house which the house would not have had, but for enactment of Article 208(1). Article 208(1) is really nothing but a recognition and express articulation of the power possessed by the House by virtue of the privilege of the House of Commons inherited by it under Article 194(3). Moreover if we have regard to the nature of the power referred to in*

Article 208(1), we find that it is a power to make rules for regulating internal procedure and conduct of business and the rules are to be made by the house itself. It is not as if the power to make rules is conferred on any outside authority; if such had been the case, it would have been possible to say that the powers conferred was a power to make binding rules of conduct having statutory force qua the persons in respect of whom the rules would be made. But here is a power conferred on the house to make rules not for others but for itself in order to regulate its own procedure and its own conduct of business. It is difficult to see how such rules can be regarded as having statutory force or effect. We may in this connection profitably refer to the decision of the Supreme Court in Co-operative Bank Central Ltd. Vs. Industrial Tribunal, Hyderabad, A.I.R. 1970 S.C. 245. There the question was whether bye-laws of a Co-operative Society framed in pursuance of the provisions of the Andhra Pradesh Co-operative Societies Act, 1964, could be said to be law or to have the force of law. The bye-laws were made pursuant to a statutory power conferred under a section of the Act. Even so it was held by the Supreme Court that the bye-laws were intended only to govern the internal management, business or administration of the society and they did not, therefore, have the force of law. Bhargava, J., speaking on behalf of the Supreme Court observed at page 252 of the report :

"We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration or a society. They may be binding between the persons affected by them, but they do not have the force of a statute."

Furthermore, the House which has the power

> *to make Rules can also alter or rescind them. There is no limitation or restriction placed by the Constitution on the power of the House to modify or rescind the rules. It is no doubt true that a certain provision is made in Rules 211 to 213 for carrying out amendments or additions to the Rules but if we look at this provision it would be apparent that the provision is wholly procedural in character and does not in any way fetter or restrict the power of the House to alter or amend the Rules. The power to make rules implies the power to make them from time to time and that would include the power to amend or rescind the rules. No rule made by the House can curtail this constitutional power whether it be read in Article 194(3) or in Article 208(1) to alter or amend the rules in the only way in which all questions before the House are decided, namely, by majority of votes. Vide Article 189. If this be the position, the question immediately arises : could it have been intended by the Constitution maker that the Rules made by the House should be legally binding on itself? If the House has power to alter or rescind the rules at any time, can it be said with any semblance of justification that the Rules have statutory force or effect so as to bind the House? It would be absurd to suggest that Rules made by the House have a binding effect on the House when the House can at any time set them at naught by altering or rescinding them. The House is the author of the rules : it is their master and not their slave and it is not possible to say that the rules have force of law so as to create binding legal obligation on the House.”*
>
> *(Emphasis supplied)*

Thus, from the above, it is clearer that rules enacted under Article 208 of the Constitution of India are not statutory in nature, otherwise the House will be bound to follow these rules. It would be absurd to suggest that Rules made by the House have a binding effect on the House. It has been held by this Court as

stated hereinabove in the aforesaid judgment that the House is the author of the Rules, it is their master and not their slave and it is not possible to say that the Rules (adopted as Rules of procedure under Article 208 of the Constitution of India) have force of law so as to create binding legal obligations on the House. Thus, explicitly it is stated in the aforesaid judgment that the rules of procedure accepted by the House of Legislature is not having any binding effect. The Rules have no statutory force. The House may depart from them at its own discretion without being answerable to any external authority. This is a method in Parliamentary Democracy by which the House of Legislature can maintain its Majesty and can work efficiently and effectively to achieve the goals to be achieved by the Constitution of India as per Articles 36 to 51. It has been held by **Hon'ble Madras High Court (Full Bench) in the case of A.M.Paulraj V/s. The Speaker, Tamil Nadu Legislative Assembly, Madras and another reported in AIR 1986 MADRAS 248**, in para-13, reads as under:

> *"13. In any case, it would not be possible for this Court under Art.226 to sit in judgement over the decision of the Speaker to allow the matter to be raised, even if it may appear that a matter which is allowed to be raised was not of recent occurrence. The rules vest an absolute discretion in the Speaker to decide whether he will permit a question of privilege to*

be raised or not. Even otherwise, rules framed under Article 208 of the Constitution are essentially procedural in character, and Article 212 does not permit the validity of any proceedings in the Legislature of a State to be called in question on the ground of any irregularity of procedure. The correctness of such decision cannot be challenged in a Court of law." *(Emphasis supplied)*

Thus, rules accepted by the House under Article 208 of Constitution of India are essentially procedural in nature and even if the procedure is not followed or there is any irregularity in the procedure adopted by the House under Article 212 of the Constitution of India, it does not permit the judicial review of the validity of the House proceedings. In the facts of the present case, as stated hereinabove, the Speaker of the House has followed direction No.23 given under Rule 183 of Gujarat Legislative Assembly Rules, adopted by the House under Article 208 of the Constitution of India. Thus, the action of the Speaker of the House is in the proceedings in the legislature of the State in conducting its business in the House and, therefore, it cannot be called in question in any Court of law, as Rules of procedure are not statutory in nature.

9. Judicial Review of decision of the Speaker or of proceedings in the House :

Learned counsel for the petitioners as well as learned counsel for respondent Nos.1 and 2 vehemently submitted that the legislature is covered by Article 12 of the Constitution of India, within the meaning of definition of the “State”. The “State” includes the Parliament of India and Legislature of each of the State. Thus, the legislature of the State is the “State” within the meaning of Article 12 of the Constitution of India and, therefore, writ under Article 226 of the Constitution of India is tenable at law.

9.1 As stated hereinabove, Article 194(3) pronounces the powers, privileges and immunities of the House of Legislatures, of its members and of its Committees. It is like a fundamental right given to the State legislature. House can set its own proceedings and adopt their own rules to conduct business in the House, as per Article 208 of the Constitution of India. The rules of procedure enacted by the State Legislature are not statutory rules as stated hereinabove. The House is not bound by those rules, nor House can be compelled to follow those rules of procedure. Even if there are some irregularities in following some rules of procedure, they cannot be questioned for their irregularities. Looking to the functions assigned to the House of the State Legislature,

if the House acts as a Tribunal and takes a decision like disqualification due to defection, the same may be subject to judicial review. If the Speaker of the House works as a Tribunal and exercises judicial powers, in such situation, the judicial review of the decision of the Speaker or the House is permissible. Very narrow is the scope for judicial review. It has been held by Hon'ble Supreme Court in the case of **Shri Kihota Hollohon V/s. Zachilhu and others reported in AIR 1993 SC 412**, especially para 41 and 42. Relevant part of para 41 and 42, read as under:

> ***"41.*** *In the operative conclusions we pronounced on 12th November, 1991 we indicated in clauses G and H therein that judicial review in the area is limited in the manner indicated. If the adjudicatory authority is a tribunal, as indeed we have held it to be, why, then, should its scope be so limited? The finality clause in paragraph 6 does not completely exclude the jurisdiction of the Courts under Articles 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of the jurisdiction. The principle that is applied by the Courts is that in spite of a finality clause it is open to the Court to examine whether the action of the authority under challenge is ultra vires the powers conferred on the said authority. Such an action can be ultra vires for the reason that it is in contravention of a mandatory provision of the law conferring on the authority the power to take such an action. It will also be ultra vires the powers conferred on the authority if it is vitiated by mala fides or is colourable exercise of power based on extraneous and irrelevant considerations. While exercising their certiorari jurisdiction, the Courts have applied the test whether the impugned action falls*

within the jurisdiction of the authority taking the action or it falls outside such jurisdiction. An ouster clause confines judicial review in respect of actions falling outside the jurisdiction of the authority taking such action but precludes challenge to such action on the ground of an error committed in the exercise of jurisdiction vested in the authority because such an action cannot be said to be an action without jurisdiction. An ouster clause attaching finality to a determination, therefore, does oust certiorari to some extent and it will be effective in ousting the power of the Court to review the decision of an inferior tribunal by certiorari if the inferior tribunal has not acted without jurisdiction and has merely made an error of law which does not affect its jurisdiction 'and if its decision is not a nullity for some reason such as breach of rule of natural justice. [See: Administrative Law by H.W.R. Wade, 6th Edn., pp. 724-726; Anisminic Ltd. v. Foreign Compensation, (1969) 2 AC 147; S. E. Asia Fire Bricks v. Non-Metallic Products, 1981 AC 363].

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In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/ Chairman under paragraph 6, the scope of judicial review under Articles 136 and 226 and 227 of the Constitution in respect of an order passed by the Speaker/ Chairman under paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

In view of the limited scope of judicial review that is available on account of the finality clause in paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/ Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/ Chairman and a quia timet action would not

be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequences.

42. *In the result, we hold on contentions E and F :*

That the Tenth Schedule does not, in providing for an additional grant for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

That paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speaker/ Chairman is valid. But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution in so far as infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity are concerned.

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh's Case (Spl. Ref. No. 1, (1965) 1 SCR 413 : (AIR 1965 SC 745) to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words "be deemed to be proceedings in Parliament" or "proceedings in the Legislature of a State" confines the scope of the fiction accordingly.

The Speakers/ Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in

that capacity are amenable to judicial review.

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/ Chairmen. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no quia timet actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequences."

(Emphasis supplied)

Thus, it is abundantly clear from the aforesaid decision that if the Speaker while exercising powers or discharging functions under the rules of procedure adopted by the House, acts as Tribunal, his decision in that capacity is amenable to judicial review.

9.2 It has been held by this Court in the case of **Dilipsinh Vakhatsinh Parmar V/s. Gumansinh Vaghela reported in 1998(3) GLR 2119** in paras 13 and 14 that the Speaker of the House has two entirely different capacities - one as Presiding Officer of the sitting of the House and another as Tribunal. In a former capacity, if any decision is taken in the course of business of the house, judicial review of the said decision is not permissible, whereas in the second capacity i.e. if the Speaker is functioning as a Tribunal, the decision of the

Speaker is justiciable. **Paras 13 and 14 of Dilipsinh Vakhatsinh Parmar V/s. Gumansinh Vaghela reported in 1998(3) GLR 2119**, read as under :

> ***"13.*** *It will thus be noticed that a Speaker of the House has two entirely different capacities – one as the Presiding Officer of the sitting of the House, and another as the Tribunal to decide the questions of disqualifications due to defection and the defences to it including the question of split. In view of the pronouncement of the Supreme Court in the case of Kihota Hollohon (supra), there can be no doubt that the final decision of the Tribunal under the Tench Schedule is subject to judicial review to the extent mentioned therein, and also any interlocutory decision of disqualification or suspension having irreversible consequences. But then, it must be an irreversible decision of disqualification under the Tenth Schedule to enable the Court to judicially review it. To arrive at any such decision under the Tench Schedule, elaborate procedure is laid down including a notice of one month. After following the judicial procedure in respect of pleadings, examination and cross examination of witnesses and hearing, the Speaker as a Tribunal will decide the question. This would be a judicial processing outside the House and its final or irreversible orders would not be immune from judicial review.*
>
> *As against that, there are internal proceedings in the House and conduct and regulation of business in the sittings of the House which are to be regulated by the Presiding Officer of the House, who may be the Speaker or the Deputy Speaker or anyone from the penal prepared by the House for such purpose. His decisions and rulings regarding the conduct and regulation of business and sitting arrangement for members are not judicial and cannot be the subject matter of judicial review. The purpose underlying the procedure and the nature of power in such matters are entirely different and the*

ratio of Kihota's judgement of the Supreme Court does not apply to such internal proceedings.

*Thus, there are two different areas, viz., **(1)** the judicial proceedings before the Speaker functioning as the Tribunal under the Tenth Schedule to decide the question of disqualification of a member and **(2)** the regular internal proceedings inside the House under the Presiding Officer, who conducts and regulates them and makes the sitting arrangements. The first may be subject to judicial review, the second is not.*

***14.** The order recognising a ground or a party under Direction (30)3 can be made at any time during the life time of the House. There is no reason to confine that provisions only to initial recognition when the House is formed. The material on record would show that the exercise undertaken for recognition of a group was in context of the Direction 30(3) only, for the purpose of recognition of the group and re-allocation of seats. The question of disqualification does not arise at that stage and certainly not at their own instance. It can arise only in the petition for disqualification against them when filed. As observed above, more recognition of group or allotment of seats with that group even in erroneous, would not debar a member from putting up his claim that he continues to be a member of the original political party and had not joined the faction that had arisen. To interject at this stage, will in our view, amount to pre-empting any proceedings that may be undertaken by the Speaker under the Tenth Schedule. The orders made under Direction 30 are essentially for regulating the internal proceedings of the House. The matter of recognition of groups and prescribing sitting arrangements by Speaker for the purpose of conducting the business of the House, is not any direction of the Constitution or the Law, but is a matter left to the House which by its Rules of business has enabled its Presiding Officer to issue such direction. A rule of Parliamentary law (i.e. the customs and usages of the Parliament), is a rule created and adopted by the legislative body*

which it is intended to govern. It is different from a provision of the Constitution, which people have set up as defining and limiting powers and duties of the legislature. The former is subject to revocation or modification at the pleasure of the body creating it, while the latter is the law of its being, and prescribes the terms on which it has power to act at all, as considered in the Constitutional law. These rules are merely procedural and in nature of bye-laws prescribed for the orderly and convenient conduct of the proceedings of the legislature. Such rules and directions are subject to revocation, modification and waiver at the pleasure of the body adopting them. The proper method of taking exception of any obnoxious ruling of a Presiding Officer would be to approach the Assembly itself. It will not be appropriate for the Court to disturb the orders made under such procedural rules as the Courts generally do not concern themselves with violations of Parliamentary Rules in deliberative proceedings and this would be so whether such Rules are codified in the form of a Manual or formally adopted or whether they consist of a body of unwritten customs or usage preserved by tradition. The legislatures have an inherent right to conduct their internal affairs without any interference from any outside body. Exclusive jurisdiction of the House in such internal matter is a necessary bulwark of the dignity and efficiency of the House and essential for the discharge of its function and based on necessity. The House should be free to interpret its own rules of proceedings and the Court cannot foist upon its own understanding of such procedural rules. The Court cannot sit in appeal over such orders of the Speaker for alleged errors in administering the Assembly rules and directions."

(Emphasis supplied)

Even in the sphere where, the Court is having power of judicial review, when the decision is taken by the Speaker as a Tribunal, very limited is the scope of

judicial review and it confines to jurisdictional error only viz.- infirmities based on violation of constitutional mandate, malafides, non-compliance of rules of natural justice and perversity, as per decision rendered by Hon'ble Supreme Court reported in **AIR 1993 SC 412**, especially para-41 thereof. In the facts of the present case, as stated hereinabove, the decision has been taken by the Speaker, as per direction No.23 issued by the Speaker, in pursuance of Rule 183(1) of the Gujarat Legislative Assembly Rules, so as to bring the report of the Public Accounts Committee within the limits of functions of the Committee, as per Rule 197(1). This decision is taken by the Speaker of the House on the basis of the procedure adopted by the House, for the proceedings in the House and in capacity of general control and supervision of the Speaker for efficient working of the committee and, therefore, it cannot be said that the decision taken by the Speaker is a decision taken by the Speaker as a Tribunal. On the contrary, the decision taken by the Speaker is as a Presiding Officer of the sitting of the House and, therefore, judicial review of his decision is not permissible and, therefore, I am not inclined to exercise powers conferred upon this Court under Article 226 of the Constitution of India. In fact, rules under Article 208 of the Constitution of

India are not statutory rules and therefore also, the House has all powers to take deviation in following procedure. In the facts of the present case, no decision has been taken by the Speaker as a Tribunal in his judicial capacity which decides rights or the liabilities of any person and, therefore also, there is no scope for judicial review of the decision of the Speaker in the facts of the present case.

9.3 It has been held by Hon'ble Supreme Court in the case of **Raja Ram Pal V/s. Hon'ble Speaker, Lok Sabha reported in 2007(3) SCC 184**, especially in para-431 thereof, which gives summary of the principles relating to parameters of judicial review in relation to exercise of parliamentary provisions.

> ***Summary of the principles relating to parameters of judicial review in relation to exercise of parliamentary provisions***
>
> *"431. We may summarise the principles that can be culled out from the above discussion. They are:*
>
> *(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny:*
>
> *(b) The Constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries,*

does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision;

(c) The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination of the legislative authority and not for determination by the courts;

(d) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;

(e) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one;

(f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(h) The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the

citizens;

(i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;

(j) If a citizen, whether a non-Member or a Member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences;

(k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;

(l) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to restrictions contained in the other constitutional provisions, for example Article 122 and 212;

(m) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case-law that emanated from Courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;

(n) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;

(o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;

(p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the Court will not lightly presume abuse or misuse, giving allowance for the fact that

the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person alleging being extremely heavy;

(q) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;

(r) Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

(s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

(t) Even if some of the material on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action;

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity."

(Emphasis supplied)

10. Illegality or breach of provisions of Constitution of India :

A argument canvassed by learned counsel for the petitioners as well as learned counsel for respondent Nos.1 and 2 is that whenever there is an illegality or breach of provisions of Constitution of India, the Court has ample power to take into judicial review of the

decision of the Speaker of the House.

10.1 It has been held by Hon'ble Supreme Court in the case of **Raja Ram Pal V/s. Hon'ble Speaker, Lok Sabha reported in 2007(3) SCC 184**, especially in para-393 thereof, reads as under:

> *"393. While we agree that contempt of authority of Parliament can be tried and punished nowhere except before it, the judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature. As has been noticed, in the context of Article 122(1), mere irregularity of the procedure cannot be a ground of challenge to the proceedings in Parliament or effect thereof, and while the same view can be adopted as to the element of "irrationality", but in our constitutional scheme, illegality or unconstitutionality will not save the parliamentary proceedings."*

10.2 It is also contended by the learned counsel for the petitioners as well as learned counsel for respondent Nos.1 and 2 that there are fundamental rights vested in the members of the State Legislature Assembly to get knowledge of the report of the Public Accounts Committee. There is breach of Article 19(1)(a) of the Constitution of India by not allowing report of Public Accounts Committee to be placed on the floor of the House and the decision of the Speaker is arbitrary in nature and,

therefore, is violative of Article 14 of the Constitution of India. This argument is not accepted by this Court mainly for the reason that the rules of procedure adopted by the House of the legislature of the State under Article 208 of the Constitution of India are not under challenge, neither the directions given by the Speaker under Rule 183 of Gujarat Legislative Assembly Rules are under challenge. If the aforesaid rules and directions are read as they are, it appears from the facts of the case that the Speaker has direct supervision and control over the working of the Committee. Even definition of word “Committee” given under Rule 2(c) contemplates working of such Committee under the direction of the Speaker. As per Rule 183 of Gujarat Legislative Assembly Rules, the Speaker has power to issue directions under his general control and supervisory powers for the efficient working of the committee; for regularizing its procedure and for organization of the work of the Committee. Direction No.23 as stated hereinabove makes it explicitly clear that the House has adopted a procedure, for conducting its business in the House, that such report (which is given by the Committee) shall be submitted to the Speaker for his information prior to, it is presented before the House. The House has also adopted the procedure that after receiving such report by the

Speaker of the House, the Speaker of the House can issue such orders as he may deem fit to give. In the facts of the present case, the Speaker of the State Legislative Assembly, upon receipt of the draft report, which is unsigned and undated and as the report of Public Accounts Committee was travelling beyond the scope of functions of Public Accounts Committee, he returns the report on 19th June,2006 to Public Accounts Committee by giving a direction, to bring the report within the scope of Rule 197(1). This direction was given as per Direction No.23 issued under Rule 183, upon interpretation of Rule 197(1) as per Speaker, Public Accounts Committee cannot consider the appropriation accounts and the finance accounts of the State upon which, no report of Comptroller and Auditor General of India is given. Thus, a direction was given as per direction No.23 on 19th June,2006 and the draft report was returned to the Chairman of the Public Accounts Committee. Again same draft was sent to the Speaker unsigned and undated on 16th July,2007, after a period of more than one year and the same was the decision of the Speaker of the House. The draft report of Public Accounts Committee was returned to the Chairman of the Public Accounts Committee. In fact, as stated hereinabove, the report must be approved by the members of the Committee, as per direction no.22 issued under

Rule 183 of the Gujarat Legislative Assembly Rules. There is no approval by the Public Accounts Committee to the report. Learned Advocate General has presented original file before this Court. There is no resolution by the Committee, upto the date of, filing of this petition that the draft report has been approved, by the members of the Committee. On the contrary, the minutes of the proceedings of the Public Accounts Committee dated 24th March,2006 and 28th March,2006 reveal that the report is in the form of draft. The same is awaiting sanction/approval of the Speaker and is not yet finalized. Thus, there is no valid report in existence. Even otherwise also, the directions given by the Speaker on 19th June,2006 have not been carried out by Public Accounts Committee. Apart from the allegation that it is not approved and it is not signed, there is no right to know what is a draft report of Public Accounts Committee. Therefore, there is no breach of fundamental rights of the petitioners guaranteed under Article 19(1)(a) of the Constitution of India. A report, which is yet to be approved by the members of the Public Accounts Committee, a report which is in its draft format and direction given by the Speaker on 19th June,2006 is yet to be carried out, the report, which is not yet signed by the Chairman of Public Accounts Committee cannot be ordered to be placed

on the floor of the House as prayed for in this petition. There is no right vested in the petitioners to get such type of draft report, unsigned, unapproved and which is in its draft format. Contention raised by learned counsel for the petitioners as well as learned counsel for respondent Nos.1 and 2 that there is a violation of Article 19(1)(a) of the Constitution of India, guaranteed to the petitioners. This contention is not accepted by this Court for the reason that members of the House cannot claim freedom of speech and expression against the Speaker of the House, no members of the House will be heard to complain that the House has violated its privilege of right of speech. It is the privilege against the outside world and not against the House. This is evident from Article 194(2) of the Constitution of India. Powers, privileges and immunities given under Article 194(1) are made subject to Article 19(1)(a) of Constitution of India whereas powers, privileges and immunities given under Article 194(2), 194(3) and 194(4) are not made subject to the provisions of the Constitution of India.

10.3 It has been held by this Court in the case of **Chhabildas Mehta, M.L.A V/s. The Legislative Assembly, Gujarat State and others reported in 1970 GLR 729**, and

especially in para-12 thereof, as under:

> *"**12.** That takes us straight to the question whether the House had the power to pass the impugned Resolution adjoining itself sine die. But before we examine this question, it is necessary to dispose of a short argument advanced by Mr.Garg on behalf of the petitioners. He urged that if the impugned Resolution was invalid and did not have the effect of adjourning the House sine die, the sitting of the House was being illegally withheld and that violated the petitioners' privilege of freedom of speech enshrined in Article 194(1). This argument was obviously advanced in order to stear clear of the privilege in Bradlaugh v. Gossett in case it was held that such privilege was incorporated in Article 194(3) for if the right of freedom of speech in Article 194(1) was violated, there could be no question of jurisdiction of the Court being excluded under Article 194(3). On the view taken by us that the privilege in Bhadlaugh v.Gossett is not incorporated in Article 194(3), this argument becomes unnecessary but since it was advanced before us, we propose briefly to deal with it. In the first place, as pointed out above, the privilege of freedom of speech, though a privilege exercisable by an individual members of the House, is really, in the ultimate analysis, a privilege of the House itself and it can never be asserted against the House. No member of the House can be heard to complain that the House has violated his privilege of freedom of speech. It is a privilege against the outside world and not against the House and this becomes evident if we look at Article 194(2) which contains the provision giving potency to the right of freedom of speech conferred under in Article 194(1). No Resolution of the House can, therefore, be assailed as violative of the freedom of speech of a member. Secondly, the privilege of freedom of speech is exercisable only when there is a sitting of the House. If the sitting of the House does not take place for whatever reason, valid or invalid, there can be no question of exercising the privilege of freedom of speech. In such a case to borrow*

> *the words of Gajendragadkar C.J., from a judgment delivered on 27th October 1965 in Writ Petitions Nos.47 and 61 of 1965, K. Ananda Nnanda Nambiar Vs. The Chief Secretary to the Govt. of Madras, "no occasion arises for the exercise of the right of freedom of speech and no complaint can be made that the said right has been invalidly invaded.". The right of freedom of speech under Article 194(1) can be invoked only if there is a direct impact upon it and not in a case such as the present where the impact, if at all, is indirect and remote. It is, therefore, not possible to sustain the argument of the petitioners that the illegal adjournment of the House sine die violated the right of freedom of speech of the petitioners."*
>
> *(Emphasis supplied)*

Thus, from the aforesaid judgment, it is clear that privilege of freedom of speech can never be asserted against the House and therefore also, contention raised by the learned counsel for the petitioners as well as learned counsel for respondent Nos.1 and 2 is not accepted by this Court. Thus, there is no breach of Article 19(1)(a) of Constitution of India.

10.4 It is contended by learned counsel for the petitioners as well as respondent Nos.1 and 2 that if there is any illegality in the decision of the Speaker, the same is justiciable. This contention is also not accepted by this Court for the reason that looking to the facts of the present case, no illegality has been committed by the Speaker of the House in giving a direction on 19th June,2006, which is reiterated on 16th

July,2007. The direction is in compliance of Direction No.23 issued by the Speaker, in pursuance of Rule 183 of the Gujarat Legislative Assembly Rules enacted under Article 208 of the Constitution of India. On the contrary, looking to the point of order raised in the House and Ruling given by the Speaker in the House, initially an opinion was also taken, by the Speaker, of an expert of the parliamentary affairs and, thereafter, the decision has been taken by the Speaker so as to bring the report of Public Accounts Committee within the boundaries of Rule 197(1) of Gujarat Legislative Assembly Rules. Thus Speaker has made an endeavour to interpret correctly Rule 197(1) and in a process, to carry out his function of general supervision and control -

(i) for the efficient working of the Committee; or

(ii) for regulating its procedure; and

(iii) for organisation of its work,

issued direction, in pursuance of power vested in him as per Direction No.23 issued under Rule 183(1) of Gujarat Legislative Assembly Rules. Thus, there is no illegality in the decision of the Speaker. As stated hereinabove, this is a procedure adopted by the House for taking its business in the House under Article 208 of the Constitution of India and, therefore, it cannot be called in question, even if there is any irregularity. The

decision of Speaker is not arbitrary, but is in compliance of Rule 183 to be read with Directions issued thereunder especially Direction No.23. Therefore, it is not in violation of Article 14 of the Constitution of India. In the facts of the present case, on the contrary, there is no procedural irregularity nor any breach of constitutional provisions. The decision of the Speaker of the House is a decision taken by him as a Presiding officer of the sitting of the House and not as a Tribunal. The House has its own fundamental rights like what is given under Article 194(3) of Constitution of India. In these circumstances, I am not inclined to issue writ of mandamus or any other appropriate writ to place report of the Public Accounts Committee on the table of the House.

10.5 Learned counsel for the petitioners as well as respondent Nos.1 and 2 have relied upon several decisions, more particularly the following decisions:

* AIR 1965 SC 751
* AIR 1966 CAL. 363
* AIR 1998 PUNJAB & HARIYANA 80
* AIR 2005 SC 3520
* JT 2005(12) SC 64
* JT 2006(2) SC 202

and mainly on JT 2007(2) SC 1

These decisions are not helpful to the petitioners nor to the respondent Nos.1 and 2, mainly for the reason that looking to the facts of the present case, the decision taken by the Speaker of the House is not in his capacity as a Tribunal in judicial proceedings but the decision of the Speaker is in pursuance of the rules of procedure adopted by the House under Article 208 of the Constitution of India. If the decision is taken as a Presiding Officer of the House while conducting the business of the House, it is covered by Article 212(1) of the Constitution of India. Even otherwise also, in the facts of the present case, as stated hereianbove, there is no existence of valid report of Public Accounts Committee, which is in its draft format, which is not approved by the members of the Public Accounts Committee, which is not signed by the Chairman of the Public Accounts Committee. Such an unsigned and undated report as per Rules of procedure adopted by the House, under Article 208 of the Constitution of India, is not allowed by the Speaker to be presented on the floor of the House. This is a decision of the Speaker in the proceedings of the House and not as a Tribunal. These facts of the present case make the case different and, therefore, the aforesaid judicial pronouncements stated by learned

counsel for the petitioners as well as respondent Nos. 1 and 2 are not applicable and are not helpful to them.

10.6 So far as the judgements, upon which reliance is placed and which are reported in **AIR 1998 SC 998 and 2005 AIR SCW 5107**, it is rightly submitted by learned Advocate General that these two decisions were interim directions given by the Hon'ble Supreme Court. There was a fraud on Constitution. Existing Chief Minister was removed and in this situation, interim direction was given. In the facts of the present case, these two judgements are not applicable. As stated hereinabove, as per rules of procedure adopted by the House, the decision has been taken by the Speaker and, therefore, aforesaid two judgements are not helpful to the petitioners as well as respondent Nos.1 and 2. Similarly, the judgement, upon which the reliance is placed, which is reported in **(1993)4 SCC 97**, looking to the facts of that case, it was motion of impeachment of a Judge. The facts of the present case are entirely different from the facts of the aforesaid judgement and, therefore, the aforesaid judgement is not applicable to the petitioner as well as to respondent Nos.1 and 2.

11. As a cumulative effect of the aforesaid facts,

reasons and judicial pronouncements, there is no substance in this petition and, hence, the same is dismissed. Notice is discharged with no order as to costs.

12. In view of the aforesaid order passed in Special Civil Application No.16631 of 2007, Civil Application No.9248 of 2007 does not survive.

(D.N.PATEL,J)

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